poems, and though he thought the author, on the whole, not a favorite poet in England, his reputation seemed to be rising from year to year. He spoke with great enthusiasm of Greece; took up a modern Greek work and read a passage from it; showed me a specimen of Athenian hemlock, and declared that the happiest days of his life were passed in that country, when he adopted the national dress and mingled like a native in the society. He kindly offered me letters of introduction to those whom he had known in that country, particularly to Ali Pacha, who figures so conspicuously in Childe Harold. This promise he fulfilled, and three years after, his letter to that extraordinary character procured me many marks of favor from the barbarous old chieftain.

'I saw Lord Byron occasionally during my short visit to London. The unfortunate occurrences in his family, which led him to the continent, had not then taken place. I afterwards saw him at Venice, where he lived in a very respectable manner; and to all appearance without affording the least foundation to many of the tales, which have obtained currency with respect to him. He was surrounded with books, and his works published about that time prove that he must have been a hard student. He then spoke of repeating his visit to Greece, but the revolution was not then even anticipated, though destined so shortly to break out.'

ART. II.—*A Treatise on the Law of Insurance.* By WILLARD PHILLIPS. 8vo. pp. 550. Boston. 1823.

THE progress of commerce in modern times will appear more surprising the more minutely it is examined. It steadily advanced among the nations of Europe during the whole of the eighteenth century, and in the latter half, notwithstanding occasional interruptions by war, it was probably double in extent and value, what it had ever attained in any other equal period. Holland had indeed lost her maritime superiority by the destruction of her carrying trade. But the Northern powers, and particularly Russia, assumed a highly commercial character. Italy was compelled to mourn the departure of the times, when Venice, and Genoa, and Leghorn, covered

the Mediterranean with their wealth. But France felt the invigorating influence of trade, and began to court with respect, what she had previously cherished only as a source of revenue. Above all, British commerce, during this period, enjoyed the most signal triumph. Her merchants and mariners were familiar with the whole Globe, with the Baltic and the Levant, the Black and the White Sea, the Atlantic and the Pacific, with the Americas and the Indies, with the fisheries of Newfoundland and Greenland, the fur trade of the Indians, the timber, hemp, and manufactures of the North, the cottons, spices, and teas of the East, and with the gums, drugs, ivory, and flesh, of Africa. It is probably short of the real state of the case to assert, that the commercial capital of Great Britain was quadrupled during the reign of George the Third. Of the causes of this vast increase it is beside our present purpose to enter into an examination. But there can be no doubt, that her navigation has been essentially aided by the improved state of her manufactures, arising as well from superior skill and workmanship, as from her wonderful inventions in cotton machinery. She now exports to the East Indies and China cotton goods of her own manufacture, to an immense value, which she formerly imported from those countries. And the unrivalled beauty and excellence of her fabrics, have not only suspended the use of those of foreign origin within her own dominions, but have enabled her in a great measure to command all the open markets of the world.

Under such circumstances it would be a natural inference, that there had been a correspondent advancement of her commercial law. The conclusion would seem natural, if not irresistible, that a people, distinguished for centuries by their commercial activity and enterprise, must have been under the protection of a well settled system of commercial jurisprudence. Philosophers and practical jurists would ask, how it would be possible for the infinite variety of business growing out of an extensive foreign trade to be adjusted, without resort to some well known rules and general principles? Strange, however, as it may seem, it is undeniable, that England had made very little progress in commercial law, at so late a period as the commencement of the reign of George the Third. Yet she had been a commercial nation, to a considerable extent, from the reign of Elisabeth; and

for more than a century had possessed plantations and colonies, whose population and trade perpetually invigorated her navigation.

A slight historical review will put this matter beyond any reasonable controversy. One of the earliest English works on maritime law is Malynes' Lex Mercatoria, published in 1622, in the reign of James the First. Welwood had a few years before printed his Abridgment of the Sea Laws; but it is principally a collection of the rules and ordinances of foreign countries. It is remarkable, that Malynes refers to no antecedent English writer on the subject of his treatise, and except in a very few unimportant instances, to no English adjudications. His work is principally a compendium of commercial usages, not confined to England, but supposed by him to be common to all the maritime states of Europe. It is quite a meagre and loose performance, and contains few principles, that are now of any practical importance. He has two or three short chapters upon bills of exchange, which show, that the doctrines upon that subject, then familiar on the Continent, were not much known in England, except as usages among merchants. He laments, that negotiable promissory notes, which then circulated among all the commercial cities of the neighboring nations, were strangers to the jurisprudence of England.

In fact, they were not introduced into general use until near the close of the reign of Charles the Second. Lord Holt, in the case of Buller *v.* Crisp, (6. Mod. Rep. 29,) decided in the second year of Queen Anne's reign, said, 'I remember when actions upon *inland* bills did first begin; and there, they laid a *particular* custom between London and Bristol, and it was an action against the acceptor. The defendant's counsel would put them to prove the custom, at which Hale, chief justice, laughed, and said, *they had a hopeful case of it.*' Lord Holt himself stubbornly denied the negotiability of promissory notes; and in this very case of Buller *v.* Crisp, it was proved, that these notes had then been 'used for a matter of *thirty* years.' It is familiar to the profession, that an act of Parliament was found necessary to put promissory notes upon the same footing as inland bills of exchange, although 'this laudable custom,' as Malynes calls it, had been long established on the Continent.

Malynes devoted five chapters, containing in all about *fifteen* folio pages, to the subject of insurance. We do not recollect that, in the whole of the discussion, a single reference is made to any English adjudication. It is indeed sufficiently apparent, that the author drew almost all his materials from foreign sources. The earliest case indeed, that is to be found on a policy of insurance, is cited by Lord Coke in Dowdale's case, 6. Co. 47. 6. as having been decided in 30th and 31st Elisabeth; and from the manner in which he refers to it, as well as from the point in judgment, it is manifest, that the action was then a novelty.

In 1651 Mr Marius, a notary public, published his book entitled, 'Advice concerning Bills of Exchange,' which went through several editions, and was the only work of much reputation, that appeared on this subject in England until after the lapse of a century. It is altogether a practical treatise, referring for authority to the common usages of merchants, and pretending to no aid from any acknowledged doctrines of the English law. At the distance of fifty years after Malynes, Mr Molloy, a barrister at law, published his work, De Jure Maritimo et Navali. The subject of Insurance is despatched in one short chapter; and though here and there a few short notes of English cases are interspersed, the substance is essentially what is found in Malynes, so that it may be fairly inferred, that, during the intermediate period, little progress had been made in the true understanding of this branch of the law. Indeed its real importance was so imperfectly estimated by the common lawyers, that Molloy triumphantly observes, 'the policies now a days are so large, that almost all those curious questions, that former ages and the civilians according to the law marine, nay, and the common lawyers too have controverted, are now out of debate; scarce any misfortune, that can happen, or provision to be made, but the same is taken care for in the policies, that are now used, for they insure against heaven and earth, stress of weather, storms, enemies, pirates, rovers, &c. or whatever detriment shall happen or come to the thing insured, &c. is provided for.' This would be strong language to use even in our days, when the legal construction of the terms and the risks of policies has been settled after very numerous and expensive litigations. But for that day, and from a lawyer too, the language

is most extraordinary; and could arise only from gross ignorance of the vast extent and variety of the subject.

In respect to navigation and shipping, which now form so large heads of commercial law, the information given by these treatises is miserably defective. It is given in three or four chapters containing little more than abstracts from the laws of Oleron, and from the short maritime titles in the civil law and its commentators. And yet these treatises, for we need hardly advert to Mr Magens' Essay on Insurances, published so late as 1755, contain the substance of all English elementary collections of maritime jurisprudence down to the period, when Lord Mansfield succeeded Sir Dudley Ryder as Chief Justice of the King's Bench. Nor was this deficiency owing to the want of talents or industry on the part of the compilers. They accumulated most of the valuable English materials within their reach. The Reports furnished very few principles, and still fewer illustrations of general application. It is true, that Lord Holt in his famous decision in the case of Coggs *v.* Barnard, in which *per saltum* he incorporated the whole civil law of bailments into the common law, led the way to a more exact understanding of the law of shipping; but the actual application of his principles belong to a later age.

That there is no exaggeration in this statement of the uncertainty and defects of the English law, on maritime subjects, will be still more fully evinced by reference to some of her best authors. Mr Justice Blackstone in his very elegant and classical commentaries, a work professing to contain a summary of the principles of English law, treats the subject of insurance in a single paragraph, and after defining the contract, and shewing it not to be usurious, briefly adds, 'The learning relating to these insurances hath of *late years* been greatly improved by a series of judicial decisions, which have now established the law in such a variety of cases, that if well and judiciously collected, they would form a very complete title in a code of commercial jurisprudence. But being founded on equitable principles, which chiefly result from the special circumstances of the case, it is not easy to reduce them to any *general heads* in mere elementary treatises.' Such was the view of a very competent judge on the state of the law in the year 1765. Mr Park, in the introduction to his system, after adverting to the history of the establishment of the Court of Policies of Assurance in the reign of Queen

Elisabeth, and its having subsequently fallen into disuse, and probably into disrepute, observes, 'But though the Court of Policies of Assurance has been long disused, though it is near a century since questions of this nature became chiefly the subject of common law jurisdiction, yet I am sure I rather go beyond bounds, if I assert, that in all our reporters from the reign of Queen Elisabeth to the year 1756, when Lord Mansfield became Chief Justice of the King's Bench, there are *sixty* cases upon matters of insurance. Even those cases, which are reported, are such loose notes, mostly of trials at Nisi Prius, containing a short opinion of a single judge, and *very often no opinion at all*, but merely a general verdict. From hence it must necessarily follow, that as there have been but few positive regulations upon insurances, the principles, on which they were founded, could never have been widely diffused, nor very generally known.' Mr Marshall in general terms confirms these observations. After referring to the establishment of the two great English Insurance Companies by the statute of 6th. George I. ch. 18, he proceeds to say, 'From this time it may be reasonably supposed, that all suits on policies of insurance were brought in the courts of common law, and yet but few questions on this subject appear to have been determined in the courts of Westminster, before the middle of the last (eighteenth) century. Whether this arose from the number of insurances in England being inconsiderable, compared to what it has since become, or from the parties being still in the habit of settling their differences by arbitration, or from both these causes united, it is not now easy to determine.' Mr Miller gives a similar view of the English law, and in marked terms attributes its great improvement to Lord Mansfield; and then speaking of his own country in 1787, adds the following remarks. 'In Scotland the improvements of this branch of law have been still later than in England, as might be expected from the slower growth of its commerce. Although the decisions of the principal courts of justice have been pretty regularly collected for more than a century, yet the first decisions, which strictly speaking relate to insurance, are all, except one, within the course of the last ten years. During this period, however, the trade of insuring has risen to a very great height, and the decisions of the Court of Sessions upon that subject have become proportionably comprehensive and systematic.'

What renders this state of the English law the more extraordinary is the fact, that almost all the important general principles of commercial jurisprudence had, for more than three quarters of a century, been reduced to a very clear and practical code in France. The very early treatise on insurance, called Le Guidon, was republished by Cleirac, in his Us et Coutumes de la Mer, in 1671. In 1673 Louis the Fourteenth published his Ordinance upon Commerce, which among other things deals largely upon the doctrines of bills of exchange and promissory notes and orders. This was followed by the truly admirable Ordinance of 1681, in which the whole law of navigation, shipping, insurance and bottomry is collected in a most systematic and masterly manner. It would be a very narrow and unjust view of these ordinances to consider them as mere collections of the municipal regulations of France. They are more properly collections of those commercial principles and usages, which the experience of merchants had found most wise and convenient in their intercourse, and which the habits of business, and the necessities of trade had gradually introduced into favor among all modern maritime nations. Yet the English common lawyers, if not profoundly ignorant of the value of this code, then passed it by with obstinate indifference, and contented themselves with a proud reliance on the old doctrines of Westminster Hall, as adequate to all the exigencies of modern society.

It seems to have been thought somewhat difficult to account, in a satisfactory manner, for this state of things, especially as Mr Magens, referring to the period when he wrote, states, 'it must be allowed that the business of insurance is carried to a much greater extent in London, than in any other country in Europe. Insurances are daily made here on adventures by foreign ships, as well as others, whose risks are wholly determinable in foreign dominions.' Mr Park and Mr Marshall obviously consider the subject as involved in much obscurity, and prudently, if not warily, abandon it to the conjectures of the reader.

To us it appears to admit of a very simple solution, although one, which the pride of the profession might not choose to point out without confessing the fallibility of the system. It is, that the common law was an *utter stranger* to

the principles of commercial jurisprudence, and slowly and reluctantly admitted them into its bosom; so that the age was always greatly in advance of the doctrines of the judicial tribunals. The ancient law dealt altogether in feudal tenures and doctrines, abounding in scholastical subtleties and refinements, and nice and curious distinctions, much better fitted for the times of chivalry and feudal burthens, than for the manhood of commerce. It had a narrow and technical mode of expounding contracts, and a still more narrow and unsatisfactory mode of enforcing them. Instead of widening its channels to accommodate the active business of life, the whole was compelled to pass, as it might, along the ancient boundaries. The subtleties of pleading, the difficulty of enforcing various defences, and the inconveniencies of screwing down general merits into established forms, embarrassed every remedy upon contracts of a special nature, and drove the parties to seek redress in the then infant, and of course very imperfect, administration of equity.

When the spirit of English commerce had embarked vast interests in trade, it found itself without any encouragement from the law, and endeavored to work its way to its rights and its duties by the aid of lights reflected from other countries. English merchants became familiar with foreign usages, and soon adopted them into the habits of their business, for want of a more certain guide. These usages soon became general; and, first, as a matter of honor, and then as a customary law, they fastened themselves upon all the transactions of trade. But it was very gradually, that the common law recognised them in any shape, and always with a cold, hesitating, and jealous caution. Slade's Case, in 4th Coke's Reports, shows how unwilling the courts of common law were to entertain the action of assumpsit in the plainest cases. They clung with obstinate reverence to the old forms of the action of debt, and found the Benchers of the Inns of Court always ready to sound the alarm against innovations. But the doctrine, now universally admitted, of giving equitable defences in evidence, and sustaining equitable claims in the action of assumpsit, would have astonished Westminster Hall almost down to the period of the Revolution of 1688, and encountered adversaries even in the days of Lord Mansfield. What would one say, if he were now told, that upon a bargain to deliver at a certain

price twenty quarters of wheat every year during the life of the party, no action could lie for any breach of the annual delivery until the party was dead? And yet this was certainly the law, while the action of debt was the sole remedy, (as it was for ages,) for debt did not lie for any breach, until all the days were incurred, i. e. until the agreement was ended by the death of the party, however inconsistent it might be with the intention of the contract. Nay, even now, the action of debt stands on the same nicety, and cannot be brought upon a note for money payable by instalments, until all the days of payment are past. The sagacity of the old law discovered, that a single action only ought to be brought upon a single contract; and to support an action for each instalment would be to make the contract divisible. Such a conclusion, however reconcilable with common sense and the intention of the parties, was abhorrent to the settled forms in the Register. Such were the narrow views of the old lawyers; and the judges at length tasked their wits in supporting the new device of the action of general assumpsit, the history of which has been given with great ability by Lord Loughborough in the case of Rudder *v.* Price, in Henry Blackstone's Reports. How utterly inadequate must such a system have been for the infinite diversity of contracts in our day?

If the difficulties, which have been adverted to, applied to contracts generally, they must have applied with far greater force to commercial contracts, which are so mixed up with usages and negotiations unknown to the common law, and are so loose in their terms and general in their obligations. In fact, the Admiralty was the only court, in which maritime law was much understood or studied; and this court had the misfortune to labor under the heavy displeasure of the courts at Westminster. The civilians were always looked upon with forbidding jealousy, and every effort was made to undervalue their learning, and depress the popularity of the civil law. We know well, what were the causes of this conduct; and do not mean to insinuate, that it was without a very strong apology. But it is nevertheless true, that from this very source, this disparaged civil law—this great fountain of rational jurisprudence—the common law has borrowed without acknowledgment all that is most useful and important in its own doctrines of contract.

It were easy to multiply these observations, and to demonstrate their correctness by exhibiting in detail, the manner in which the remedies upon commercial contracts were hampered by technical proceedings under the old law. But such a detail would be very dry, and though matter of curiosity, would scarcely repay the labor of perusal, even to a professional reader. It has indeed often been said, that the law merchant is a part of the common law of England; and my Lord Coke has spoken of it in this manner in his Institutes, though it would be somewhat difficult to find out, what part of the law merchant, as we now understand it, existed at that period. If the expression, that the lex mercatoria is a part of the common law, be anything more than an idle boast, it can mean only, that the general structure of the common law is such, that without any positive act of the Legislature, it perpetually admits of an incorporation of those principles and practices, which are from time to time established among merchants, and which from their convenience, policy, and consonance with the general system, are proper to be recognised by judicial tribunals. In this sense the expression is perfectly correct; in any other sense it has a tendency to mislead.

Almost all the principles, that regulate our commercial concerns, are of modern growth, and have been engrafted into the old stock of the law by the skill of philosophical as well as practical jurists. One of the leading cases, in which there is some flourish made about this maxim, that the law merchant is part of the common law, is Vanheath *v.* Turner in the nineteenth year of the reign of king James the First. It is reported in Winch's Reports; and as it happens now to lie open before us, we will extract the substance of it, to show how commercial contracts were dealt with at that period. It was a special action, and Winch states it thus. 'Peter Vanheath brought an action against Turner and declared upon the *custom of merchants*, that if any merchant over the sea deliver money to a factor, and make a bill of exchange under his seal, and this is subscribed by the merchant, or by any of the company of such merchants, that the merchant himself, or all the company, or any one in particular, may be charged to pay that; and he shewed, that one merchant was factor of the company, of which the defendant was one, and

that merchant did substitute one G, to whom the plaintiff delivered £100 upon a bill of exchange, to which bill one B, being one of the company, set his hand in England, and so the action accrued to the plaintiff. The defendant pleaded, *nil debet per legem;* and upon that the plaintiff demurred in law, and the question was, whether the defendant might wage his law.' This is Winch's statement of the case, very imperfect to be sure, but by which it appears to have been the case of a bill of exchange drawn for money received of the payee, by the agent of a factor of an English partnership on the company, and accepted by one of the partners, and upon that acceptance, the suit was brought against the defendant, who was one of the partners. Now the first thing, that strikes us is, that so little did the common law recognise the custom of merchants, that it was necessary to set it forth specially in the declaration, so that it might appear how the custom bound the party; and the court might decide, whether it was good or not. After the argument, Lord Chief Justice Hobart is reported to have delivered his opinion as follows. 'If the bailiff at the common law make a substitute, the substitute is not chargeable, but here the custom will bind the law. Secondly, he said two or three merchants trade over the sea, who made a factor there, who takes money there, and gives a bill and this is subscribed by one of the company; that this should bind all or any of the company *is not a good custom;* and the custom of merchants is part of the common law of this realm, of which the judges ought to take notice; and if any doubt arise to them about their custom, they may send for the merchants to know their custom, as they may send for the civilians to know their law; and he thought the defendant ought to be admitted to wage his law.' Now, independently of the objection, that if the defendant were admitted to wage his law, that is to say, discharge himself from the debt by taking his oath, that he did not owe it, which of itself would almost extinguish the negotiability of bills, it would sound very odd at this day to hear any such doctrine assumed, as that respecting the badness of the custom. It is now the plain mercantile law, as it always was common sense, that the acts of a factor within the scope of his authority, whether done by himself or his substitute, bind the partnership, for which he acts; and the acts of a partner in the partnership

business in like manner bind the whole. Such was at that period, as it should seem, the custom of merchants; but it was strange to the common lawyers, and seems to have harmonised very little with the notions of the court. Yet Lord Hobart was an eminent judge; and we are to attribute his views, not to a want of sagacity, but to a steady adherence to the rigid doctrines of the common law, as to bailiffs and customs, to which the old lawyers clung with a pertinacious idolatry. The truth is, that these gentlemen were from habit and professional feeling wedded to the artificial notions of the old system, and strenuously resisted almost every innovation upon it both in Parliament and out; and every advance made in adopting the custom of merchants, until the days of Lord Mansfield, was a victory gained by the spirit of the age and the influence of commerce over professional prejudices.

And this leads us to say a few words upon the actual administration of insurance law during the days of Lord Mansfield, and of the improvements made by him. We do not know, that it can be done with more brevity than by quoting an extract from Mr Park.

'In former times,' says he, 'the whole of the case was left generally to the jury,* without any minute statement from the bench of the principles of law, on which insurances were established; and as the verdicts were general, it was almost impossible to determine from the reports we now see, upon what grounds the case was decided. Nay, even if a doubt arose in point of law, and a case was reserved upon that doubt, *it was afterwards argued in private at the chambers of the judge, who tried the cause, and by his single decision the parties were bound.* Thus whatever his opinion might be, it was never promulgated to the world, and could never be the rule of decision in any future case. Lord Mansfield introduced a different mode of proceeding; for in his statement of the case to the jury, he enlarged upon the rules and principles of law as applicable to that case, and left it to them to make the application of those principles to the facts in evidence before them. So that if a general verdict were given, the ground on which the jury proceeded, might be more easily ascertained. Besides, if any real difficulty occurred in point of law, his lordship advised the counsel to consent to a special case, &c. &c. These cases are afterwards argued, *not before the judge in private*, but in *open court*, before *all the judges* of the bench, from which the record comes. Thus nice and important questions are now not

* Very much as it used to be within our early recollection in the courts of Massachusetts.

hastily and unadvisedly decided; but the parties have their case seriously considered and debated by the whole court; the decision becomes notorious to the world; it is recorded for a precedent of law arising from the facts found, and serves as a rule to guide the opinion of future judges.'

The commendation of Lord Mansfield, which this extract implies, falls very far short of his real merits. The change in the course of proceedings did much; but the genius, liberality, and extensive learning of this extraordinary man gave a new and enduring vigor to the system itself. He may be truly said to have created the commercial law of England; and during his long, active, and splendid life, it attained a maturity and perfection, which perhaps no other nation can boast, and which will transmit his name to posterity as one of the greatest benefactors of jurisprudence. The achievement was not indeed the result of his own unassisted mind. He read extensively the maritime laws of foreign countries, and with an admirable mixture of boldness, discretion, and sagacity, infused all its most valuable principles into the municipal code of England. At the distance of half a century one looks back with wonder and surprise upon the labors of this single judge. His successors have here and there added some pillars to the edifice; but the plan, the proportions, the ornaments, the substructions, all that is solid and fundamental, and attractive, belong to him, as the original architect. Standing in the temple of commercial law, the most sober jurist, while contemplating Lord Mansfield's labors, might with enthusiasm exclaim, *Si monumentum quæris, circumspice.* Dropping, however, figurative language, we may with plain gravity venture to suggest a doubt, whether the deviations from his doctrines, introduced by his successors, have not been inconvenient in practice and mischievous in principle. They partake too much of the subtleties and technical refinements of the common law, and stand little upon general reasoning, and those analogies, which equity and a comprehensive view of the business of commerce would commend for adoption. Lord Kenyon was an honest, intelligent, and learned magistrate; but from habit and education, and perhaps original cast of mind, he does not seem ever to have entered into the true spirit of commercial jurisprudence. He took no comprehensive principles in his range, and contented himself by administering the maritime law, as he

found it, without any ambition to extend its boundaries. Lord Ellenborough possessed a more powerful and vigorous mind. But his early reading beyond the walks of the common law does not seem to have been very extensive; and he manifests on many occasions a desire to bring down the maritime doctrines to the standard of the common law, rather than to give to the latter the expansion of universal jurisprudence. He was certainly a great judge, of a clear, decisive, and rapid mind, but devoted to England, and feeling little enthusiasm and less curiosity to embark in foreign studies. The times too, in which he lived, were not propitious to any extensive researches into continental jurisprudence. They were times of deep political and national struggles, when the spirit of war and conquest attempted to overturn the established doctrines of public law; and those who clung to old institutions felt, that resistance to innovation was safety, and that dangers lurked in ambush under the cover of general principles. Fortunate will it be, however, for England, if in the present peaceful times there shall be found a successor of Lord Mansfield, who breathes his liberal spirit, and fills up his splendid outline of principles.

It cannot, however, be disguised, that there is a national pride and loftiness of pretension occasionally mixed up in the character of Englishmen, which lead them, especially as public men, to look down, sometimes with contempt, but more generally with indifference, upon the usages, laws, and institutions of other countries. *Nil admirari* is not always a safe or useful national motto. The English bar is not exempt from this infirmity, and betrays it sometimes, when it would be more honorable to seek instruction from foreign sources. It is curious to observe, how little of foreign jurisprudence is brought into the discussions of their courts of common law (for it is far otherwise in their admiralty and civil law courts) upon topics, which seem most powerfully to demand its introduction. Even upon questions of the operation of the Lex Loci, how rarely has continental or even Scotch jurisprudence been cited with effect in these tribunals. Ireland is separated but by a narrow strait. Her jurisprudence is in substance that of England. Her most distinguished lawyers and judges have been bred in the English inns of court. In eloquence, in learning, in general ability, they are inferior to few in the

United Kingdom. Yet who ever heard the citation in an English court of an Irish decision? With the exception of a few of Lord Redesdale's, which probably owe their admittance into English society from his elevated rank in the House of Lords, we scarcely recollect any in the course of our reading. Why should they not be cited? Was Sir John Mitford, when he wrote his excellent treatise on Equity Pleadings, or held the office of Attorney General of England, superior to Lord Redesdale, when he held the seals of Ireland? Is Lord Manners less distinguished as an Irish Chancellor, than when he filled the office of a Baron of the English Exchequer?

Perhaps it may be suggested as an apology, that the English law is of itself so vast a field, that it can scarcely be mastered, and it is unnecessary to attempt any foreign conquests; that the decisions of English judges are alone of authority, and it is unwise and impolitic to open wider inquiries, which would perplex and obstruct the already darkened and crowded avenues of professional studies. There is something plausible in such a suggestion; but it vanishes on a close examination of the subject. If the English common law were perfect in itself, and were susceptible of no improvement, it might justly refuse any foreign admixture. But no one would be so rash as to advance a pretension of this sort. The common law is gradually changing its old channels and wearing new. It has continual accessions on some sides, and in others leaves behind vast accumulations, which now serve little other purpose than to show, what were its former boundaries. What have become of the feudal tenures and the thousand questions of right and might, which formerly came home, not merely to the lords of the manors, but to every thatched cottage of the kingdom? What have become of real actions with all the complicated apparatus of proceedings, with which they so much perplexed, not to say confounded, and overwhelmed the profession? More than sixty years ago we were told, in the celebrated judgment of Taylor *v.* Horde, that the precise definition of what constituted a disseisin, was not then known and could not be traced in the books. And yet almost all the contests of the old law were upon questions, in which the law of disseisins was a material ingredient. What have become of the nice and curious distinctions in respect to uses

and trusts, which in Lord Coke's time and in earlier periods exercised all the ingenuity of the profession? In a *practical* sense they have almost disappeared, or are felt to be of little value, since the courts of equity have exerted their most salutary jurisdiction over this vast field of litigation. Where in the old law shall we find principles to adjust the innumerable questions arising in bankruptcy? Where shall we look for the doctrine of liens, of stoppage in transitu, of marshalling assets, of the execution of charities, in short, of the mass of business in which modern legal and equitable jurisdiction is employed? It is obvious, that the law must fashion itself to the wants, and in some sort, to the spirit of the age. Its stubborn rules, if they are not broken down, must bend to the demands of society. A mere written code must forever be inadequate to the business of a nation increasing in wealth and commerce, and connecting itself with the interests of all the world. A customary law, adopted in rude and barbarous times, must melt away or mix itself with the new materials of more refined ages. Human transactions are dividing and subdividing themselves into such innumerable varieties, that they cannot be adjusted or bounded by any written or positive legislation. The law, to be rational and practicable, must, as was finely said by Lord Ellenborough of the rules of evidence, expand with the exigencies of society. As new cases arise, they must be governed by new principles; and though we may not remove ancient landmarks, we must put down new ones, when the old are not safe guides, and no longer indicate the travelled road, or mark the busy shifting channels of commerce.

It is most manifest, therefore, that the English law, working, as it does, into the business of a nation crowded with commerce and manufactures, must forever be in search of equitable principles to be applied to the new combinations of circumstances, which are daily springing up to perplex its courts. In adopting new rules it is indispensable to look to public convenience, mutual equities, the course of trade, and even foreign intercourse. It is plain, that in such inquiries, the customary and positive law of foreign countries, as the result of extensive experience, must be of very great utility. No nation can be so vain as to imagine, that she possesses all wisdom and all excellence. No civilised nation is so humble

that her usages, laws, and regulations do not present many things for instruction, and some for imitation. In respect to the general principles of jurisprudence, those which are applicable to the ordinary concerns of human life in all countries, and ought to be law in all, because they are founded in common sense and common justice, it is undeniable, that much light may arise from the investigations of foreign jurists. Genius and learning can never fail to illustrate the principles of universal law, even when the primary object is merely to expound municipal institutions. The Dutch, the German, the Italian, the Spanish, or the French civilian is not less a master of equity and rational jurisprudence, when he deals with the Roman law, colored, and it may be shaded, by his own local customs and ordinances, than the lord Chancellor on the woolsack, enforcing trusts in *foro conscientiæ*, or the lord Chief Justice, when expounding commercial contracts at the Guildhall of London. The truth is, that the common law, however reluctant it may be to make the acknowledgment, and however boastful it may be of its own perfection, owes to the civil law and its elegant and indefatigable commentators, (as has been already hinted,) almost all its valuable doctrines and expositions of the law of contract. The very action of assumpsit, in its modern refinements, breathes the spirit of its origin. It is altogether Roman and Pretorian. And there never has been a period, in which the common lawyers, with all their hostility to the civil law, have not been compelled to borrow its precepts. The early work of Bracton shews how solicitous some of the sages were, even in that rude age, to infuse into their own code some of that masculine sense, which found favor in the days of Justinian.

What, indeed, should we think, in the present times, of men, who affect to be indifferent to the writings of such authors as D'Aguesseau, Domat, Valin, Pothier, and Emerigon? Mr Duponceau in his late excellent Dissertation on the Jurisdiction of the Courts of the United States,—a work that should be profoundly studied by all American lawyers,—has said, that the works of Pothier were warmly recommended by Sir William Jones to his countrymen, '*but without success.*' We hope his language is too strong. That such a writer as Pothier should be neglected by Englishmen, would be a disgrace to the learning and literature of the nation.

Who has written with so much purity of principle, such sound sense, such exact judgment, such practical propriety on all the leading divisions of contracts? Who has treated the whole subject of maritime law so fully, so profoundly, so truly with a view to its equity and advancement, as Valin? Who has equalled Emerigon as a theoretical and practical writer on the law of insurance? He has exhausted every topic so far as materials were within his reach; and upon all new questions his work, for illustration, and authorities, and usages, is still unrivalled.

We think, indeed, that we perceive the dawn of a brighter age in the English law, when the foreign lights, which have been slowly and by stealth admitted into Westminster Hall, will be hailed with a liberal spirit, and will irradiate its bar and benches. Mr Joy, in the case of M'Iver *v.* Henderson, (4 M. and S. 576,) and Mr Campbell and Mr Bosanquet in the case of Bush *v.* the Royal Exchange Insurance Company, (2 Barn. and Ald. 72.) shewed a familiar acquaintance with the foreign maritime jurists, and argued with great effect from their authority; and on a comparatively recent occasion, (5 M. and S. 436.) when Emerigon was cited, Lord Ellenborough said, 'Emerigon, whose name has been so frequently mentioned in the course of the argument, is entitled to all the respect, which is due to a very learned writer, discussing a subject with great ability, diligence, and learning, and adverting to all the authorities relating to it.' Mr Justice Bailey and Mr Justice Best, who are judges of uncommon ability, have repeatedly of late adverted to the French maritime authors with discriminating accuracy, and in terms of the most unreserved respect. We consider these indications of a liberal study of foreign jurisprudence, as extremely creditable to this age of the common law, and augur from them, for the future, a far more expanded view of commercial questions, than has usually been encouraged since the days of Lord Mansfield.

If we were disposed to recommend the study of public and foreign law to common lawyers, we do not know how we could better do it, than by pointing out some illustrious examples of its successful accomplishment in our own age. Sir James M'Intosh, of late years so distinguished in Parliament as a friend to liberty, to science, and liberal institutions, and who is at the same time a most humane and philosophical

jurist, has in his incomparable introductory Discourse to his Lectures on the Law of Nations, given us a finished specimen of the advantages resulting from the mastery of foreign public writers. It would, perhaps, be difficult to select from the whole mass of modern literature, a discourse of equal length, which is so just and beautiful, so accurate and profound, so captivating and enlightening, so enriched with the refinements of modern learning, and the simple grandeur of ancient principles. It should be read by every student for instruction and purity of sentiment, and by lawyers of graver years to refresh their souls with inquiries, which may elevate them above the narrow influences of a dry and hardening practice.

But a still more striking example is Lord Stowell, (better known in this country as Sir William Scott,) the present venerable Judge of the High Court of Admiralty, of whom it may be justly said, in the language of Cicero, that he is *jurisperitorum eloquentissimus.* This great man has presided in the Court of Admiralty since the year 1798; and during this period he has commanded the admiration of all Europe by the learning, acuteness, and finished elegance of his judgments. There was a time, when it was somewhat the fashion in this country to undervalue the solid excellence of his opinions. Our commerce was brought so directly in conflict with his administration of prize law, that it was difficult to avoid prejudices on a subject, in which, as neutrals, we had so deep an interest, and were so liable to indulge strong animosities. But time has dissipated many delusions on this subject; and we have had in the late war ample opportunity to try the accuracy of his principles, when we changed the character of neutrals for that of belligerents. We can now look back upon his decisions with somewhat of the calmness and sobriety of a philosophical historian. With the exception of the doctrines respecting the colonial trade, in which it is but common justice to admit, that he either acted upon public Orders in Council, which he was bound to obey, or upon the Rule of 1756, which his government had previously chosen to consider as an established part of its prize code, the differences between his decisions upon prize law, and those promulgated by the Supreme Court of the United States, are so few, as to be almost evanescent. After the most powerful arguments

under the highest political excitements, and with the aid of the most striking eloquence, there has been but a single principle adopted by him, which has been deliberately overruled by the Supreme Court; and on that occasion there was a serious difference of opinion among the Judges.

But it is not in respect to prize law, that we intend to speak of Lord Stowell, though he everywhere exhibits the most profound and accurate knowledge of all the publicists of continental Europe; but as a maritime judge, deciding, in what is called the Instance Court, the great principles of commercial jurisprudence. His superiority in this department over the technical reasoning of the common lawyers is most signal. He discusses every question with a persuasive and comprehensive liberality, with a tone of general equity, a knowledge of maritime usages, and a disposition to consider maritime jurisprudence, as the unwritten law of the world, rather than the municipal monopoly of a single nation; and he draws from all sources, ancient and modern, the best and purest principles to aid, to illustrate, and to confirm his own judgment. With him the grave learning of Grotius, the acute, bold, and somewhat vehement discussions of Bynkershoek, the reverend testimonies of the Consolato del Mare, the collections of Cleirac, the busy, practical sense of Roccus, the brief but clear text of Heineccius, the various and exhausting labors of Casaregis, the argumentative commentaries, and luminous treatises of the French jurists, appear as perfectly familiar, as the writers of his own age and country. He evidently reposes upon them, even when he does not cite them; and transfuses into his own eloquent and impressive judgments, whatever they afford of general doctrine, or just interpretation, upon all the doubtful questions of maritime law. One scarcely knows which most to admire, the simplicity of his principles, the classical beauty of his diction, the calm and dispassionate spirit of his inquiries, his critical but candid estimate of evidence, his strong love of equity, his deep indignation of fraud, chastened by habitual moderation, or that pervading common sense, which looks into, and feels, and acts upon the business of life with a discriminating, but indulgent eye, content to administer practical good without ostentation, and wasting nothing upon speculations, whose origin is enthusiasm, and whose end is uncertainty or mischief. Even

when he deals with subjects of another class, as in ecclesiastical causes in the Consistory Court, one is surprised to see with what admirable propriety he uses his knowledge of general jurisprudence and the civil law, to give vigor to his decrees. And upon questions involving the *lex loci*, he has triumphantly shown, that he can master the results of foreign jurisprudence, and, as in the very interesting case of Dalrymple *v.* Dalrymple, compose the strifes of the learned advocates of the Scottish bar, and fix forever upon an immovable basis a question, which had vexed the domestic forum of Scotland for a long period with its doubts and difficulties. We say, without hesitation, that the character of this eminent Judge, whatever may have been his original genius and ability, owes its present elevation, in a great measure, to his enlarged studies, and his cultivation of universal jurisprudence. Take, for instance, his celebrated judgment in the case of the Gratitudine in 1801, on the right of the master to hypothecate the cargo, as well as the ship and freight, for the necessities of the voyage; or the case of the Julianna in 1822, on the invalidity of a stipulation in the shipping paper to cut off the seamen from wages, unless the voyage was performed to the final port of destination; where shall we find in the annals of the common law, except among the judgments of Lord Mansfield, cases argued out upon such rational and enlightened principles, aided by sober and various learning, and ending in conclusions so irresistible? One seems in them to be reading, not the law of England merely, but the law of the world—the results of human reason and human learning, acting on human concerns, with reference to principles absolutely universal in their justice and convenience of application. We wish American lawyers would study the fine models of this sagacious Judge, with a diligence proportionate to their importance and utility.

We cannot quit this subject, without recommending to our brethren of the English bar, if perchance these pages should attract their notice, the study of American jurisprudence. Of course we do not mean of our local laws and peculiar systems, for we should as little advise this, as we should to our own lawyers, the study of the English law of tythes and moduses, and copy holds, from which we are separated *toto cœlo*. What we do recommend is the study of our commercial ad-

judications. This is not said, we hope they will believe, from vanity, under a false estimate of our own attainments. American lawyers are in the constant habit of reading all the English Reports; and it would be worse than affectation to attempt to disguise, that we are greatly instructed and improved by them. They present to us the fruits of great experience, industry, intelligence, and ability. But we 'also are painters.' The American Courts, collectively considered, embrace a large proportion of talent and learning, and they are perpetually engaged in many of the discussions, which perplex the English tribunals. Of course, there is a great diversity in the attainments of the judges and lawyers in the different States composing the Union, arising from local circumstances. But in the principal Atlantic States, the system of maritime law is of daily application to business, and is studied with earnest diligence.

In one respect there is a striking contrast between the state of the English and that of the American bar. In England, the profession is broken up into distinct classes. The civilians engross, exclusively, the admiralty and ecclesiastical courts, and even these are separated into proctors and advocates. The Chancery Courts have their own solicitors and counsellors. The barristers and serjeants of the common law generally confine themselves to the practice of their own particular courts. The attorney is a being, who deals with processes and proceedings in suits, but is shut out from the rights of arguing counsel. The conveyancer pours over his own peculiar studies for chamber practice; and the special pleader, if he wins his way to a lucrative practice, sits under the bar a quiet spectator of forensic disputations, unless the niceties of his own craft come into play. In America all this is different. The same gentleman acts, or may act, (with scarcely an exception,) in all these different capacities; and in the course of a single term of a court may assume many of the functions of all of them. He is, or may be, at once, proctor, advocate, solicitor, attorney, conveyancer, and pleader; he may draw libels and bills, frame pleas and answers, direct process, prepare briefs, sketch drafts of conveyances, argue questions of fact to the jury, and questions of law to the court; and find himself quite at home in all these various employments. If it should be thought, that this singleness of occu-

pation and subdivision of labor give to the English lawyer more accuracy, minute knowledge, and perfect facility in the use of his materials, they carry with them on the other hand some disadvantages. The general tendency of such close pursuits is to narrow down the mind to mere technical rules; to exhaust its powers upon subtle distinctions and dull details; to make professional life an affair of collections and recollections; to create an acute and nice discrimination, rather than a solid and comprehensive understanding. What is gained by skill in the manipulation, is lost in the vigor of the blow.

The course of the American lawyer does not, it must be confessed, generally lead to such exact inquiries, and such perfect finish, although there have been eminent examples to the contrary. But a survey of the whole structure of the law conducts him to large and elevated views, to brilliant and successful illustrations, to reasonings from various contrasts and analogies of the law, and to those generalisations, which invigorate eloquence, and shadow out the finer forms of thought. His learning must be deep, and various, even if it is not in all respects exact; and will be tinctured with the hues of all his studies. His law silently acquires the tone and spirit of equity; and his commercial discussions urge him to search for and adopt in argument, whatever of excellence the genius and erudition of foreign jurists have brought to his notice. He knows too, that in the American courts there is no disposition to discourage the study of foreign jurisprudence. There is a freedom from restraint, and an habitual eagerness to expand our law, which favor every attempt to build up commercial doctrines upon the most liberal foundation. We do not mean to affirm, that American lawyers in general cultivate such extensive studies, or are distinguished by such elevated attainments. What we mean to assert is, that the general tendency of our system is to excite an ambition for such studies and attainments, and that the genius of the profession is perpetually attracted in its researches and reasonings to those general principles, which constitute the philosophy of the law. We could point out living models, who exemplify all, that we have suggested in commendation of the American system; and among the illustrious dead within our own brief career, we fear no rebuke in naming Hamilton, Dexter, Pinkney, and Wells. But it is unnecessary to trust to as-

sertion. The records are before us and can be searched. Look to the judgments of the Supreme Courts in the States of Pennsylvania, New York, and Massachusetts, upon questions of maritime and commercial law, as they stand in the reports of Messrs Tyng, Binney, Johnson, and Sergeant, and Rawle. It is impossible not to feel, that the arguments in these causes and the judgments, which followed them, would do credit to the tribunals of any country. They are full of learning, fine reasoning, acute distinctions and solid principles, such as might well guide the sober sense of Westminster Hall, and cast a strong light upon its oracles. Look to the Chancery decisions of New York. Where shall we find in our times a more thorough mastery of the civil and maritime, of the common and equity law, where a more untiring research, a more critical exactness, a more philosophical spirit, than is displayed in the elaborate arguments of her late Chancellor ?

We think, therefore, that in recommending the labors of the American lawyers and judges to the attention of English lawyers, we do them a service, by which they may greatly profit ; and in this manner we may make a suitable return for the many aids, which America received from the parent country, when her own jurisprudence was loose, unformed, and provincial.

The progress indeed, that has been made in America, in the knowledge and administration of commercial law, since the revolution, is very extraordinary ; and in no branch more striking than in that of Insurance. Before that event, policies of insurance were of rare use among us. Our intercourse with the mother country was so direct and so dependent, that most of the important risks were underwritten in London, through the instrumentality of agents. Our printed reports do not reach far back beyond the revolutionary period ; but the manuscripts we have seen, and the absence of references to cases in the arguments, even of ante-revolutionary lawyers, establish to the satisfaction of all accurate observers, that the subject was new to the studies of the bar. The earliest, and indeed the only case we recollect in any of our books, before the Declaration of Independence, is that of Story and Wharton *v.* Strettell, in 1764, reported by Mr Dallas in the first volume of his Reports. It was not until the French revolution, by

opening new and extensive sources of profitable trade, gave an impulse to our maritime enterprise, that the contract struggled into notice from a state of languor, and became common in our commercial cities. It immediately advanced with almost inconceivable rapidity, and became so profitable, that it may truly be said to have laid the foundation of many fortunes in our country. The profession soon felt the necessity of an entire mastery of the subject, and applied itself with a most commendable diligence to the study of all the English and other foreign authorities. And within the last thirty years, probably, as large a number of cases of insurance have been contested and decided in the American courts, upon points of difficulty and extensive application, as in the courts of England in the same period. We do not hesitate to assert, that these cases have been argued with as much learning and ability, and with as comprehensive a view of the true principles of the contract, as any in the brightest days of the English law. And we are greatly deceived, if, upon a general examination, they will not be found by English lawyers and judges to be full of useful instruction, and worthy of their deliberate study. Many of them discuss questions arising from the complicated state of our commerce, as a neutral nation, which have not as yet undergone any adjudication in the English courts.

We will close this topic with a very short historical sketch of the principal modern English treatises on insurance. We pass over at once without any particular notice, the remarks on the subject contained in the work on Bills of Exchange and Insurance ascribed to Mr Cunningham, and in Mr Parker's Laws of shipping and insurance, as they were so imperfect as to have sunk into obscurity. Mr Weskett's book is a mere collection, in the form of a dictionary of all the heads of maritime law, and contains little more than an index to foreign ordinances and usages. The title, Insurance, in the collections of Postlethwayte and Beawes are of the same character. The first treatises, correctly speaking, are those of Mr Millar, a Scotch advocate, and Mr Park, (now Mr Justice Park of the Common Pleas,) both published in the year 1787. Mr Millar's work is certainly creditable to his talents and industry, and exhibits considerable research and habits of observation. It has not, how-

ever, received a great share of public favor, nor, as we believe, reached a second edition, probably, because it has been superseded in practice by the very superior treatise of his rival, both in method and materials. Mr Park, indeed, deserves much praise for the judgment, accuracy, and general excellence of his system of the Law of Insurance. The best testimony of its value is the continued approbation of the profession, which has already carried it through seven large editions. As a collection of authentic cases in the fullest and most accurate form, it still remains unrivalled. Although it professes to be principally 'a collection of cases and judicial opinions,' the learned author occasionally discusses general principles with a good deal of ability. In 1802 Mr Serjeant Marshall published his Treatise on the Law of Insurance, and again in 1808 published a second and improved edition. His work professes to be, not like Mr Park's, a collection of cases, but an examination and collection of principles. It is certainly a work of high merit, analysing and criticising the cases with great acuteness and vigor; and citing the foreign authorities, with which the learned author appears familiar, with a creditable liberality. Whenever he ventures to give his own comments, they indicate perspicacity and closeness of observation. But after all, the work seems to promise more than it performs. It contains little of doctrine or discussion, beyond what the English decisions exact or furnish. We look in vain for any attempt to extend the boundaries of the law beyond actual adjudications, and for any satisfactory argument upon topics, which yet remain unsettled by the courts. And a great defect, in the work, as indeed in all others—a defect, which has been but imperfectly supplied by the late treatise of Mr Stevens, is the want of a *practical* treatise upon averages and the adjustment of losses. We believe, that the learned author is now dead, so that there is little probability, that the work will be rendered more complete.

But whatever may be the value of the English treatises on insurance, it is most obvious, that they are inadequate to supply the necessities of the American Bar. They embrace no cisatlantic decisions; and every work for our use, which does not contain them, is infected with a fatal infirmity. From what has been already suggested, it is

clear, that the actual administration of commercial jurisprudence in our own courts must, for argument, for authority, and for practice, be far more important to us, than any foreign opinions ever can be. In respect to insurance, although the law in most commercial states rests on the same basis of general principles, these principles admit of considerable diversity of judgment in their application, and are often controlled by the known policy or ordinances of each particular government. This is so true, that there are probably no two civilised nations, in which the law of insurance is exactly the same in all its outlines and details. Although our own law of Insurance professes to be, and in fact is, the same in its general structure and principles as that of England, yet without any statuteable provisions, we already find many conclusions embodied in it, which are at variance with those of Westminster Hall. In some of these cases the English decisions may be more just and satisfactory than our own. In others we have no hesitation in declaring the American more solid, rational, and convenient. If it would not lead us into too prolix a discussion, we should incline to enter on the task of enumerating the leading differences, in order to enable the profession to form an exact judgment on the subject. But we must pass from these topics, and hasten to the close of an article already extended far beyond the limits, which we had originally intended. We will just mention, however, the point, that the right of abandonment depends upon the state of the fact at the time, when it is actually made, and when once legally exercised, it is not divested by any subsequent change of the facts, as one, in which we differ from English Courts; and we are entirely satisfied, that our rule has the justest foundation in principle as well as policy. The same conclusion has been more than once intimated by the great mind of Lord Chancellor Eldon.

From what has been said, our opinion may be readily conjectured, as to the indispensable necessity of a new treatise on insurance, for the use of American lawyers; and Mr Phillips has done a most acceptable service to the profession by the publication of that, the title of which stands at the head of this article. One of two courses only could be pursued; either to republish the best English work, and append the American decisions in the shape of perpetual notes, which would have form-

ed a very inconvenient and bulky commentary, not easily reducible to specific heads; or to recast the whole materials, and produce a new work, which should contain in one text the mass of English and American authority. Mr Phillips has chosen the latter course, and in our opinion, with great sagacity and sound judgment; and he has executed his task in a manner, which will obtain the general confidence and respect of the profession. His work is arranged in a very lucid method, and embodies in an accurate form, the whole system of the law of insurance, as it is actually administered in the courts of England and America. It is eminently practical and compendious, at the same time that it is full of information. Wherever he has introduced any comments of his own, of which he has been somewhat too sparing, he has shown sound sense, and a liberal juridical spirit. In respect to America, his work will probably supersede altogether the use of Mr Marshall's; but Mr Park's, as the fullest repertory of all the cases, will continue to retain the public favor. The labor of such a compilation must unavoidably have been great, and required the most patient research and various study. The author, as a scholar, a gentleman, and a lawyer, has now put himself before the public and the profession for their patronage of his labors; and we are satisfied, that he will not be disappointed in the result. He need not blush for his authorship, nor fear the scrutiny of dispassionate criticism. His work has a solid character, and will sustain itself the better, the more it is examined. In a modest and well written preface he has expounded his design and method, and we extract from it the following remarks, which we think are characterised by a sobriety of judgment, and justness of thought, that cannot fail to insure general commendation.

'When the inquiry does not relate to the probable decision of any one tribunal, different persons must necessarily adopt different modes of determining what is law. If a person supposes himself not to be skilful and well informed, in regard to the subject under consideration, he can only adopt the opinion of the judge or writer, whose judgment he thinks it the most safe to follow. He must decide upon authority merely, and be implicitly guided by the opinions of those men whom he supposes to have had the best means, and to have been the most capable, of judging, and to have formed their opinions the most deliberately, and after the most thorough investigation. In proportion as a person considers himself skilful

and competent to judge, he is the less determined by mere authority. But very few persons consider themselves to be so perfectly masters of any branch of legal science, as to throw off all restraint of authority; and those who are, with good reason, the most confident of their skill and knowledge, are usually, in forming their opinions, influenced, more or less, by authority, according to the particular subject of inquiry. In most cases it is necessary to take into consideration what has been practised and decided, since the mere fact, that a thing has been decided or practised in a certain manner, is, in itself, a reason of greater or less weight, for continuing the same practice, or adhering to the established doctrine.

'In many branches of the law, precedent, as such, and independently of the reasons upon which it was formed, is entitled to great respect, and is not unfrequently conclusive of the law. But where a decision or opinion rests upon a certain principle, the applications of which, in different instances, must be consistent and also conformable to other acknowledged principles; precedent has less weight. Concurrent decisions, however numerous they may be, cannot establish a conclusion, which is drawn from insufficient premises; or cause inconsistent propositions to be law. A very great part of the law of insurance consists of deductions from certain principles, which constitute a science, in regard to which, mere precedent cannot have very great influence, since deductions inaccurately made, lead to contradictions and inconsistencies, which no authority can vindicate. In some branches of this subject, precedent is of authority and weight, but the great part of the doctrines comprehended in this science, must stand exclusively upon the reasons and fixed principles, from which they are inferred. The inferences, which may be clearly drawn from those principles, are not made to be law, and cannot cease to be law, in consequence of any number of decisions, by whatever authority they may be supported. Notwithstanding a diversity of opinions and judgments, those doctrines still remain the unvarying and unalterable law, and they need but to be presented with the reasons on which they depend, to receive the assent of a mind, which is capable of perceiving their mutual connexion and dependency. No branch of law can more properly be denominated a science, than insurance; and since this contract is substantially the same in different countries, and continues to be the same now that it was formerly, the decisions of courts, whether ancient or modern, and the opinions and reasonings of writers, whether American, English, Italian, or French, are equally applicable to it.'

Of a work confessedly professional, it cannot be expected, that we should enter upon a minute review, for the purpose of detecting slight faults, or contesting particular opinions.

The task would be irksome to ourselves, and so heavy and technical, as to afford very little satisfaction to our readers. It is impossible to include in a single volume the opposite qualities of brevity and copiousness, a condensed summary of principles, and an elaborate discussion of the minute details and distinctions of cases. Whoever writes a mere practical treatise, must leave much matter worthy of observation to more exhausting authors. In this age, books to be read must be succinct, and direct to their purpose. The business of commercial life will not stop, while lawyers plunge into folios of a thousand pages, to ascertain a possible shade of distinction in the construction of contracts. If, therefore, there should be any persons disposed to think, that cases and comments should have been given more at large, the true answer is, that such was not Mr Phillips's plan; and that his work is to be judged of, not by its adaptation to other purposes, but by its actual execution of his own design. In this respect it has our hearty approbation, and we sincerely recommend it to all, who are interested in commercial jurisprudence, as merchants, lawyers, and judges. We think, however, that, in a future edition, Mr Phillips will do well to enrich his work with extracts from Valin, Emerigon, and Pothier, upon points, which have not yet received any adjudication, and occasionally to introduce some of their speculative reasonings. We should be glad also to have more full practical information, upon the adjustment of averages and losses, and the items, which are to be admitted or rejected, having had occasion to know, that nothing is more various, uncertain and anomalous, than the modes of settling losses in different insurance offices. Even in the same office, a departure from the principle assumed, as to one subject of insurance, is not uncommon as to another, upon some fanciful notion of its inapplicability. The form of Mr Phillips's Index also might be advantageously changed, so as to make it more easy for consultation, by the use of a larger type, and breaking it up into more paragraphs, with short subordinate titles.